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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of:

Petition to Amend Rule 1.6 of the
Arizona Rules of Criminal Procedure

Supreme Court No. R-06-0016

**Comment of the Arizona Public
Defender Association**

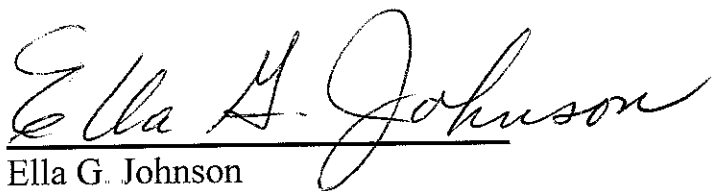
The Arizona Public Defender Association (“APDA”) opposes the modified petition pending before this Court. The APDA is an Arizona non-profit corporation comprised of public defense offices, programs, attorneys and support staff throughout the state. The primary purposes of our organization include improving the quality of legal representation of poor people who face the loss of their liberty, safeguarding the constitutional rights of indigent individuals, and resolving criminal matters effectively and fairly.

Our offices defend the overwhelming majority of individuals who face criminal charges in Arizona, most of whom begin their experiences with the criminal courts in initial appearance proceedings. Many of our clients are the working poor, desperately trying to support themselves and their families with low-level jobs. They are “fungible” members of the work force and the difference between missing one day of work and missing one week of work frequently is the difference between them keeping a job or being part of the ever-growing number of unemployed. Release determinations made at initial appearances are, therefore, critical to the economic survival of our clients and their families. In addition, many of our clients suffer from mental illness and serious medical conditions.

These individuals should be represented by counsel who can argue for their release, contest probable cause determinations when appropriate, and alert the court to any medical and mental health needs. Unfortunately, most jurisdictions in Arizona are unable or unwilling to provide funding for court-appointed counsel at initial appearances. As a result, the overwhelming majority of our clients must advocate for themselves at this critical juncture in their lives. They are placed at an even greater disadvantage if, in trying to do so, they are relegated to a video appearance from a jail and beamed into a courtroom where all of the other critical participants appear in person.

The APDA strongly believes that, at a minimum, these individuals need to be afforded the right to appear in person at initial appearances, and opposes the pending petition's mandate that these proceeding can be held by videoconferencing without a defendant's consent. The position paper submitted by a minority of the Criminal Rules Advisory Committee and the contemporaneously filed comments submitted by the Pima County Public Defender and Maricopa County Public Defender provide well-reasoned analyses of the problems with the pending petition and the appropriateness of the minority's alternative proposal. In the interest of brevity, we incorporate the position paper and those comments by this reference and respectfully request the Court to adopt the proposed rule changes set forth in the minority's proposal.

RESPECTFULLY SUBMITTED this 17th day of July, 2009.

A handwritten signature in cursive script, reading "Ella G. Johnson". The signature is written in dark ink and is positioned above a horizontal line.

Ella G. Johnson
Vice President
Arizona Public Defender Association

